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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,638	11/12/2003	Amit V. Patel	911	7888
7590	12/28/2007		EXAMINER	
Amit V. Patel 2289 Willoway Street Yorktown Heights, NY 10598		JACKSON, BRANDON LEE		
		ART UNIT		PAPER NUMBER
		3772		
		MAIL DATE		DELIVERY MODE
		12/28/2007		PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/706,638	PATEL, AMIT V.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Brandon Jackson	3772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 05 November 2007.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-5,7-12,24 and 25 is/are pending in the application.
- 4a) Of the above claim(s) 1 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 2-5,7-12,24 and 25 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 05 November 2007 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____	6) <input type="checkbox"/> Other: _____

## **DETAILED ACTION**

This action is in response to amendments/arguments filed 11/5/2007. Currently, claims 1-5, 7-12, and 24-25 are pending in the instant application. Claims 6 and 13-23 have been canceled.

### ***Election/Restrictions***

Claim one will not be examined because it has been amended to include "a support mechanism extending between the first plate and the second plate, for maintaining the first plate in a fixed position relative to the second plate when the apparatus is in use." This limitation is drawn to figure 4, which is a part of non-elected Species II.

### ***Drawings***

The drawings are objected to because "rigid segment," "flexible segment," and "compressible padding" should be deleted from the drawings. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement

sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-5, 7-12, and 24-25 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 2-5, 7-12, and 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maddox (U.S. Patent 1,340,630) in view of Picolet et al. (US Patent 4,492,225). Maddox discloses an apparatus (fig. 1) for immobilizing an injured joint of the body comprising a first plate (35) adapted for engaging limb of the body and having an end portion. A second plate (12) adapted for engaging a body part to which the limb is connected via a joint, the second plate having an end portion. The first and second plates (35, 12) are contoured to receive a body part. A lockable joint (24, 26) connecting the first and second plates, which is a pivotable hinge having a locking mechanism (27, 28) for locking the hinge at desired orientations. The apparatus discloses at least one securing mechanism (47) attached to the first plate (35) and comprising a strap (47); and a second securing mechanism (16) attached to the second plate (12) and comprising a strap (16). The apparatus comprises compressible padding (36) attached to a concave surface of the first plate (35); and compressible padding (14) attached to a concave surface of the second plate (12). The apparatus has at least one securing mechanism comprising a strap (47) and fastener (18), of which the fastener comprises a hook and loop fastener. In view of the applicant's specifications, page 8, lines 19-21, the buckle (18) is seen to be equivalent to the hook and loop fastener. The first plate (35) apparatus is capable of being disassembled from the second plate (12). The wing nut (28) is capable of being removed, which will allow the screw (27) to be removed and the first plate (35) to be removed from the second plate (12). Therefore, the term "capable" has been given its broadest, most reasonable

interpretation and the device is capable of being disassembled. Further, being "capable" is a recitation of a function and is not a positive limitation but only requires the ability to perform. It does not constitute a limitation in any patentable sense. The first and second plates (35, 12) are connected to rods (30, 11) that have ends and are adjustable (col. 2, lines 70-97). Maddox fails to disclose the plates are flat and then curved when in use by use of alternating rigid and flexible plate segments lengthwise in the plate. However, Picolet teaches plate (1) comprises alternating rigid plate segments (15, 16, 17, 22, 23, 24) and flexible plate segments (18, 19, 25, 26) to allow the plate (1) to be concavely formed to an appendage. Therefore, it would be obvious to one of ordinary skill in the art to substitute the Maddox plate for the plate, as taught by Picolet, in order to have the plates be adjustable to better fit specific users.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Scheinberg et al. (US Patent 6,991,612), Katzin (US Patent 6,261,253), Katzin et al. (US Patent 5,733,249), Scheinberg et al. (US Patent 6,981,956) Kinnier Wilson (US Patent 3,942,522), Cantrel (US Patent 5,591,121), Darcey (US Patent 6,712,780).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brandon Jackson whose telephone number is (571)272-3414. The examiner can normally be reached on Monday - Friday 8-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571)272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*Brandon Jackson 12/20/07*  
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Examiner  
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BLJ

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